

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**JEWELINA GONZALEZ, by and
through her mother, JESSICA
SOLIZ as Guardian Ad Litem,
individually and as successor of
interest to JASON GONZALEZ,**

Plaintiff,

v.

**KYLE NUNEZ, in his individual
capacity; ANDREW MACK, in his
individual capacity; JUAN VIDAL, in
his individual capacity;
CHRISTOPHER CEASER, in his
individual capacity; SCOTT
WHITTAKER, in his individual
capacity; RYAN PATRIK, in his
capacity,**

Defendants.

1:20-cv-01298-NONE-JLT

**STIPULATED PROTECTIVE
ORDER**

Judge: NONE

Trial Date: Not set

Action Filed: September 10, 2020

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may

1 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
2 enter the following Stipulated Protective Order. The parties acknowledge that this
3 Order does not confer blanket protections on all disclosures or responses to
4 discovery and that the protection it affords from public disclosure and use extends
5 only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles. The parties further acknowledge, as set forth
7 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
8 file confidential information under seal; Local Rule 141 sets forth the procedures
9 that must be followed and the standards that will be applied when a party seeks
10 permission from the court to file material under seal.

11 **B. GOOD CAUSE STATEMENT**

12 Defendants and California Highway Patrol (CHP) may be producing
13 documents concerning CHP's confidential internal policies, which documents are
14 generally unavailable to the public. The disclosure of this information may
15 jeopardize the security of CHP's operations, and jeopardize the safety of peace
16 officers. Defendants may also be producing documents that contain personal and
17 confidential information regarding individuals which information is generally
18 unavailable to the public, including peace officer personnel records and records
19 related to third parties. The disclosure of this information to the public may violate
20 those individuals' privacy rights. Defendants may also be producing video, audio
21 and still photo images related to the incident at issue in this case which is generally
22 unavailable to the public. In addition, defendants may be producing investigation
23 reports which are generally unavailable to the public, the disclosure of which could
24 violate individuals' privacy rights and jeopardize the safety of officers.

25 Accordingly, to expedite the flow of information, to facilitate the prompt
26 resolution of disputes over confidentiality of discovery materials, to adequately
27 protect information the parties are entitled to keep confidential, to ensure that the
28 parties are permitted reasonable necessary uses of such material in preparation for

1 and in the conduct of trial, to address their handling at the end of the litigation, and
2 serve the ends of justice, a protective order for such information is justified in this
3 matter. It is the intent of the parties that information will not be designated as
4 confidential for tactical reasons and that nothing be so designated without a good
5 faith belief that it has been maintained in a confidential, non-public manner, and
6 there is good cause why it should not be part of the public record of this case.

7 C. LOCAL RULE 141.1 STATEMENT

8 In accordance with the provisions of Local Rule 141.1, the parties state as
9 follows:

- 10 (1) The information eligible for a protective order in this case is:
- 11 a. employment records that would otherwise be privileged;
- 12 b. law enforcement tactical and evaluative information;
- 13 c. confidential information concerning the privacy of third
- 14 parties to this lawsuit; and
- 15 d. autopsy photos.
- 16 (2) A particularized need exists as to these categories as follows:
- 17 a. these records contain confidential and personal
- 18 information;
- 19 b. these records contain information that may constitute
- 20 official information and could risk the safety and security
- 21 of law enforcement officers if publicly disseminated; and
- 22 c. these records contain information of third parties to this
- 23 lawsuit that are confidential and personal in nature.
- 24 (3) A court order is needed to ensure the privacy and
- 25 confidentiality of this information is enforceable after the
- 26 litigation has ended.

27 //

28 //

2. DEFINITIONS

2.1 Action: *Gonzalez v. Nunez, et al.*, United States District Court for the Eastern District of California, Case No. 1:20-cv-01298-NONE-JLT.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and

1 have appeared in this Action on behalf of that party or are affiliated with a law firm
2 which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.

22 Any use of Protected Material at trial shall be governed by the orders of the
23 trial judge. This Order does not govern the use of Protected Material at trial.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this Action,

1 with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber the case development process or to
17 impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection, that Designating Party must
21 promptly notify all other Parties that it is withdrawing the inapplicable designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in
23 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
25 under this Order must be clearly so designated before the material is disclosed or
26 produced.

27 //

28 //

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix at a minimum, the legend
5 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page
6 that contains protected material. If only a portion or portions of the material
7 on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the
9 margins).

10 A Party or Non-Party that makes original documents available for
11 inspection need not designate them for protection until after the inspecting
12 Party has indicated which documents it would like copied and produced.
13 During the inspection and before the designation, all of the material made
14 available for inspection shall be deemed “CONFIDENTIAL.” After the
15 inspecting Party has identified the documents it wants copied and produced,
16 the Producing Party must determine which documents, or portions thereof,
17 qualify for protection under this Order. Then, before producing the specified
18 documents, the Producing Party must affix the “CONFIDENTIAL legend” to
19 each page that contains Protected Material. If only a portion or portions of
20 the material on a page qualifies for protection, the Producing Party also must
21 clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins).

23 (b) for testimony given in depositions that the Designating Party
24 identify the Disclosure or Discovery Material on the record, before the close
25 of the deposition all protected testimony.

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent
28 place on the exterior of the container or containers in which the information

1 is stored the legend “CONFIDENTIAL.” If only a portion or portions of the
2 information warrants protection, the Producing Party, to the extent
3 practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such
7 material. Upon timely correction of a designation, the Receiving Party must make
8 reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 251.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on
17 the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party’s designation until the Court rules on the
23 challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending, or attempting to settle this Action. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the Action has been terminated, a
2 Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving
9 Party may disclose any information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is
12 reasonably necessary to disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this
15 Action;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and Professional
22 Vendors to whom disclosure is reasonably necessary for this Action and who
23 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
24 A);

25 (g) the author or recipient of a document containing the information or
26 a custodian or other person who otherwise possessed or knew the
27 information;

28 //

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.; and

(j) Counsel for plaintiffs in *Christina Gonzalez, et al, v. State of California*, United States District Court for the Eastern District of California, Case No. 1:20-CV-00912-NONE-JLT.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

//

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 action as “CONFIDENTIAL” before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party’s
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material and nothing in these provisions
9 should be construed as authorizing or encouraging a Receiving Party in this Action
10 to disobey a lawful directive from another court.

11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a
14 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
15 information produced by Non-Parties in connection with this litigation is
16 protected by the remedies and relief provided by this Order. Nothing in these
17 provisions should be construed as prohibiting a Non-Party from seeking
18 additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the
21 Party is subject to an agreement with the Non-Party not to produce the Non-
22 Party’s confidential information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-
24 Party that some or all of the information requested is subject to a
25 confidentiality agreement with a Non-Party;

26 (2) promptly provide the Non-Party with a copy of the
27 Stipulated Protective Order in this Action, the relevant discovery
28 request(s), and a reasonably specific description of the information

1 requested; and

2 (3) make the information requested available for inspection by
3 the Non-Party, if requested.

4 (c) If the Non-Party fails to seek a protective order from this court
5 within 14 days of receiving the notice and accompanying information, the
6 Receiving Party may produce the Non-Party's confidential information
7 responsive to the discovery request. If the Non-Party timely seeks a
8 protective order, the Receiving Party shall not produce any information in its
9 possession or control that is subject to the confidentiality agreement with the
10 Non-Party before a determination by the court. Absent a court order to the
11 contrary, the Non-Party shall bear the burden and expense of seeking
12 protection in this court of its Protected Material.

13 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
17 writing the Designating Party of the unauthorized disclosures, (b) use its best
18 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
19 person or persons to whom unauthorized disclosures were made of all the terms of
20 this Order, and (d) request such person or persons to execute the "Acknowledgment
21 and Agreement to Be Bound" that is attached hereto as Exhibit A.

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other
26 protection, the obligations of the Receiving Parties are those set forth in Federal
27 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
28 whatever procedure may be established in an e-discovery order that provides for

1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or work
4 product protection, the parties may incorporate their agreement in the stipulated
5 protective order submitted to the court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in
12 this Stipulated Protective Order. Similarly, no Party waives any right to object on
13 any ground to use in evidence of any of the material covered by this Protective
14 Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 141. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information
20 in the public record unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within 60
23 days of a written request by the Designating Party, each Receiving Party must
24 return all Protected Material to the Producing Party or destroy such material. As
25 used in this subdivision, "all Protected Material" includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the
27 Protected Material. Whether the Protected Material is returned or destroyed, the
28 Receiving Party must submit a written certification to the Producing Party (and, if

1 not the same person or entity, to the Designating Party) by the 60 day deadline that
2 (1) identifies (by category, where appropriate) all the Protected Material that was
3 returned or destroyed and (2) affirms that the Receiving Party has not retained any
4 copies, abstracts, compilations, summaries or any other format reproducing or
5 capturing any of the Protected Material. Notwithstanding this provision, Counsel
6 are entitled to retain an archival copy of all pleadings, motion papers, trial,
7 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
8 and trial exhibits, expert reports, attorney work product, and consultant and expert
9 work product, even if such materials contain Protected Material. Any such archival
10 copies that contain or constitute Protected Material remain subject to this Protective
11 Order as set forth in Section 4 (DURATION).

12 14. Any violation of this Order may be punished by any and all appropriate
13 measures including, without limitation, contempt proceedings and/or monetary
14 sanctions.

15
16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17
18 Dated: December 3, 2020

THE LAW OFFICES OF YOUNG
WOOLDRIGE, LLP

By: s/ Thomas A. Brill
Thomas A. Brill
Attorneys for Plaintiff

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Dated: December 3, 2020

XAVIER BECERRA
Attorney General of California
MARK T. CUMBA
Supervising Deputy Attorney General
AMIE MCTAVISH
Deputy Attorney General

As the filer of this pleading, I attest
that all other signatories listed, and on
whose behalf the filing is submitted,
concur in the filing's content and have
authorized the filing.

s/ Donna M. Dean

DONNA M. DEAN
Deputy Attorney General
Attorneys for Defendants
Kyle Nunez, Andrew Mack, Juan
Vidal, Christopher Ceaser, Scott
Whittaker, and Ryan Patrick

12
13
14
15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

16 IT IS SO ORDERED.

17
18 Dated: December 3, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

19 EXHIBIT A

20 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

21 I, _____ [print or type full name], of
22 _____ [print or type full address], declare under penalty of perjury
23 that I have read in its entirety and understand the Stipulated Protective Order that
24 was issued by the United States District Court for the Eastern District of California
25 on [date] in the case of *Gonzalez v. Nunez, et al.*, Case No. 1:20-cv-01298-NONE-
26 JLT. I agree to comply with and to be bound by all the terms of this Stipulated
27 Protective Order and I understand and acknowledge that failure to so comply could
28

1 expose me to sanctions and punishment in the nature of contempt. I solemnly
2 promise that I will not disclose in any manner any information or item that is
3 subject to this Stipulated Protective Order to any person or entity except in strict
4 compliance with the provisions of this Order.

5 I further agree to submit to the jurisdiction of the United States District Court
6 for the Eastern District of California for the purpose of enforcing the terms of this
7 Stipulated Protective Order, even if such enforcement proceedings occur after
8 termination of this action. I hereby appoint _____ [print
9 or type full name] of _____ [print or type
10 full address and telephone number] as my California agent for service of process in
11 connection with this action or any proceedings related to enforcement of this
12 Stipulated Protective Order.

13
14 Date: _____

15 City and State where sworn and signed: _____

16 Printed name: _____

17 Signature: _____
18
19
20
21
22
23
24
25
26
27
28